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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,329	04/25/2005	Henri Vial	BJS-2350-102	1692
23117 7590 06/30/2010 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
POWERS, FIONA				
ART UNIT		PAPER NUMBER		
1626				
MAIL DATE		DELIVERY MODE		
06/30/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/521,329

**Applicant(s)**

VIAL ET AL.

**Examiner**

Fiona T. Powers

**Art Unit**

1626

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 53, 54 and 58-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 53, 54 and 58-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

Claims 53, 54 and 58 to 69 are pending in the application.

Receipt is acknowledged of the amendment filed June 24,  
which has been entered in the file.

***Response to Amendment***

The finality of the previous office action is withdrawn in  
view of the new rejections which follow.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35  
U.S.C. 112:

The specification shall conclude with one or more claims particularly  
pointing out and distinctly claiming the subject matter which the applicant  
regards as his invention.

Claims 53, 54 and 58-69 are rejected under 35 U.S.C. 112,  
second paragraph, as being indefinite for failing to  
particularly point out and distinctly claim the subject matter  
which applicant regards as the invention.

1. In claim 53, line 3, "having a formula" renders the  
claim indefinite because "having" is an open term which would  
read on formula (I) having other constituents. The phrase  
should be change to "of the formula".

In claim 53, the definition of  $R_2$  and  $R_3$  and/or  $R'_2$  and  $R'_3$  which appears in part below renders the claims indefinite.

$R_2$  and  $R_3$  and/or  $R'_2$  and  $R'_3$  can be the same ~~substituent or different~~, ~~[[or]]~~ double-bonded to the nitrogen, ~~[[or]]~~ cyclized with, respectively,  $R_1$  or  $R'_1$  in order to form a heterocycle, ~~if appropriate and  $R_2$ ,  $R_3$ ,  $R'_2$  and  $R'_3$  may be independently~~ substituted by  $R_a$ , which is chosen from H, alkyl, alkyl substituted by 1, 2 or 3 halogen atoms, aryl, CO-O-alkyl, CO-O-aryl, -CO-OH, -CO-NH<sub>2</sub>, -CN, -CO-NH-alkyl, -CO-NH-aryl, -CO-N-(alkyl)<sub>2</sub>, CO-nitrogenated heterocycle, CO-oxygenated heterocycle, CO-

For example,  $R_2$  and  $R_3$  are defined as H, alkyl (e.g. CH<sub>3</sub>), CO-C-CH<sub>2</sub>-aryl, CO-O-alkyl, PO(O-alkyl)<sub>2</sub>, PO(ONa)<sub>2</sub> etc. which can neither be double-bonded to nitrogen or cyclized with  $R_1$  to form a heterocycle.

2. In claim 60, "has a formula" renders the claim indefinite because "has" is an open term which would read on formula (I) having other constituents. It is suggested that the phrase be change to "of the formula".

3. In claim 65, "having the general formula" renders the claim indefinite because it implies that compounds not embraced by the formula are being claimed. It is suggested that the phrase be change to "of the formula".

4. Claim 66 does not find antecedent basis in claim 65 because in claim 66,  $R_1$  and/or  $R'_1$  represent a hydrogen atom but in claim 65,  $R_1$  and  $dR_2$  as well as  $R'_1$  and  $R'_2$  form a heterocycle.

#### ***Response to Arguments***

The rejection of the claims under 35 U.S.C. 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraphs presented in the previous office action have been withdrawn due to applicants amendment and/or arguments.

#### ***Allowable Subject Matter***

Claim 53 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 54 and 58-69 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fiona T. Powers whose telephone number is 571-272-0702. The examiner can

normally be reached on Mon - Thurs 6:15 am - 2:45 pm (in the office) and Fri 7:00 am - 5:30 pm (telework day).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on 571-272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Fiona T. Powers/  
Primary Examiner, Art Unit  
1626

ftp  
June 29, 2010